

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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YAN ZHAO

Plaintiff

v.

UNITED STATES OF AMERICA  
DEPARTMENT OF HOMELAND SECURITY

**VERIFIED COMPLAINT  
WITH JURY DEMAND**

CIV \_\_\_\_\_

Defendants  
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Plaintiff, above named, for her cause of action against the defendant, alleges upon knowledge, information and/or belief:

**FIRST:** That this action is brought against the defendants under the Federal Tort Claims Act, more particularly, Section 28 U.S. Code 1346 and 2671 et seq.

**SECOND:** That at all times hereinafter mentioned, the plaintiff was and is a resident of the People's Republic of China.

**THIRD:** That the defendants Robert Rhodes, Emmet Russell, and Amina Zinnerman were and are residents of the Western Judicial District of New York.

**FOURTH:** That the defendants Robert Rhodes, Emmet Russell, and Amina Zinnerman were employed as Department of Homeland Security Customs and Border Protection Officers at the time of the actions giving rise to the instant suit.

**FIFTH:** That the Department of Homeland Security is part of the Federal Government and the United States of America is a proper defendant pursuant to 28 USCA §1346(b).

**SIXTH:** That a Notice of Claim was filed against the United States of America

and the Department of Homeland Security on or about September 15, 2004 by service of the requisite amount of copies upon the Department of Homeland Security, the Department of Justice, the Department of State, and the Bureau of Customs and Border Protection. That although more than six months have elapsed since service of said Notice of Claim, the defendant has either failed or refused to pay all or part of said claim.

**SEVENTH:** That on or about July 21, 2004, when plaintiff was present in the area of U.S. Customs at the Rainbow Bridge in Niagara Falls, New York, she was caused to be injured due to the negligence, carelessness and reckless actions of the said United States of America through its officers, agents and employees, including Robert Rhodes, Emmet Russell, and Amina Zinnerman, due to the joint and concurrent negligence, willfulness and wantonness of the defendants.

**EIGHTH:** That the plaintiff was at all times using due care.

**NINTH:** That by reason of the premises, the plaintiff suffered certain severe, permanent and painful injuries, internal as well as external.

**AS AND FOR A SECOND, SEPARATE AND DISTINCT  
CAUSE OF ACTION AGAINST THE DEFENDANTS:**

**TENTH:** Plaintiff repeats, restates and realleges each and every allegation contained in said Complaint as if more fully set forth herein.

**ELEVENTH:** That the defendants unlawfully and without just cause arrested the plaintiff and in the course of said arrest the defendants unlawfully laid hands upon the plaintiff, as well as acted in a malicious, reckless, gross and outrageous manner and/or committed actions which amounted to an assault.

**TWELFTH:** That by reason of the reckless, violations and wanton assault and unlawful laying of hands and other violations upon the plaintiff, plaintiff suffered certain

severe, permanent and painful injuries, internal as well as external.

**AS AND FOR A THIRD, SEPARATE AND DISTINCT  
CAUSE OF ACTION AGAINST THE DEFENDANTS:**

**THIRTEENTH:** Plaintiff repeats, restates and realleges each and every allegation contained in said Complaint as if more fully set forth herein.

**FOURTEENTH:** That although at the time of her arrest, the plaintiff committed no offense, defendants, through their officers, agents and employees, arrested and detained plaintiff in wanton and malicious disregard for the truth and without her consent, and plaintiff was subject to great humiliation and ridicule and was injured in her credit and reputation.

**FIFTEENTH:** That by reason of the premises, the plaintiff suffered certain severe, permanent and painful injuries, internal as well as external.

**AS AND FOR A FOURTH, SEPARATE AND DISTINCT  
CAUSE OF ACTION AGAINST THE DEFENDANTS:**

**SIXTEENTH:** Plaintiff repeats, restates and realleges each and every allegation contained in said Complaint as if more fully set forth herein.

**SEVENTEENTH:** That the plaintiff was totally innocent of any charges and was forced by the defendants Robert Rhodes, Emmet Russell, and Amina Zinnerman, agents and employees, to submit to arrest, imprisonment, indignities, humiliation, without her consent, all to plaintiff's further damage.

**EIGHTEENTH:** That by reason of the premises, the plaintiff suffered certain severe, permanent and painful injuries, internal as well as external.

**NINETEENTH:** During all times mentioned above, the defendants, each of them separately and in concert, acted under cover and pretense of law, to wit under the statutes,

regulations, customs and use of the State of New York and the United States, each of the defendants separately and in concert, engaged in illegal conduct herein mentioned, all to plaintiff's injury and deprived plaintiff of her rights and privileges secured by the First and Fourteenth Amendments to the Constitution and all of the laws of the United States.

**TWENTIETH:** That by reason of the premises, the plaintiff suffered certain severe, permanent and painful injuries, internal as well as external.

**AS AND FOR A FIFTH, SEPARATE AND DISTINCT  
CAUSE OF ACTION AGAINST THE DEFENDANTS:**

**TWENTY FIRST:** Plaintiff repeats, restates and realleges each and every allegation contained in said Complaint as if more fully set forth herein.

**TWENTY SECOND:** The acts and conduct of the defendants and natural defendants, individually and as officers, agents and/or employees of the United States of America, were gross, wanton, willful, reckless and outrageous by reason of which the plaintiff has suffered loss, degradation, personal anguish, humiliation and distress.

**TWENTY THIRD:** That by reason of the premises, the plaintiff will seek punitive damages.

**TWENTY FOURTH:** Plaintiff hereby demands a jury trial in the above captioned action pursuant to FRCVP Rule 38(b).

**WHEREFORE,** plaintiff demands judgment against the defendants, jointly and severally, in the sum of TEN MILLION (\$10,000,000.00), together with interest, costs and disbursements of this action.

DATED: Buffalo, New York  
November 15, 2005

Respectfully submitted,  
**PAUL WILLIAM BELTZ, P.C.**

By:  
s/Thomas J. Gaffney  
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INDIVIDUAL VERIFICATION

STATE OF NEW YORK  
COUNTY OF ERIE  
CITY OF BUFFALO

I, Yan Zhao, being duly sworn deposes and says that I am the plaintiff in this action; that I have read the foregoing Summons and Complaint and know the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief and that as to those matters I believe it to be true.

X\_\_\_\_s/Zhao Yan\_\_\_\_\_

Subscribed and Sworn to before me  
at 41-60 Main Street Flushing, N.Y.  
this 10<sup>th</sup> day of November, 2005

s/Stanley J. Legan, Esq.  
Notary Public  
State of New York  
No. 4679659  
Westchester County  
Commission Expires on 2/28/07